In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-276

D. J. McQUESTION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This case involves a claim for additional compensation pursuant to the "changed conditions" clause (Pet. A3-A4) of a government contract. Petitioner had contracted to construct the earthen first-stage embankment of the Millwood Dam at Little River Arkansas. The contract provided that fill for the embankment was to be taken from a designated borrow area and was to be of a certain quality. Petitioner alleged a changed condition in that the material actually encountered in the source area differed ma-

terially from that indicated on the contract drawings, and that, therefore, all of the fill material had to be taken from a more distant location with a consequent increase in cost.

The contracting officer denied the claim for these additional costs, on the ground that petitioner had failed to give timely notice of the alleged changed conditions as required by the contract. After hearing, the Board of Contract Appeals found that petitioner had failed to establish its claim on the merits and thus deemed it unnecessary to pass on the issue of notice (Pet. A8-A19). The Court of Claims affirmed (Pet. A1-A8), concluding that the record amply supported the conclusion of the Board (Pet. A8). As that opinion demonstrates, there is no occasion for further review in this essentially factual case.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1971.

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